



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of ) Art Unit: 1648  
CLASSEN, John Barthelow ) Examiner: PARK, H.  
Serial No.: 09/660,584 ) Washington, D.C.  
Filed: September 12, 2000 ) April 7, 2004  
For: METHOD AND COMPOSITION ) Docket No: CLASSEN=1D  
FOR AN EARLY VACCINE TO )  
PROTECT AGAINST BOTH... ) Confirmation No.: 2284

TERMINAL DISCLAIMER TO OBVIATE DOUBLE PATENTING  
REJECTION OVER PRIOR PATENT OR PROVISIONAL  
DOUBLE PATENTING REJECTION OVER COPENDING PATENT APPLICATION

1. Petitioner, Classen Immunotherapies, Inc., is the owner of the entire right, title and interest in the instant patent or patent application identified above.

Petitioner is Assignee of record of all of the right, title and interest in the instant application or patent identified above.

The interest of Petitioner-Assignee is evidenced by

An assignment from John Barthelow Classen to Classen Immunotherapies, Inc. recorded by the USPTO on February 11, 2003 at reel 013773, frame 0236.

The documents evidencing the ownership and chain of title of the instant patent or application have been reviewed and to the best of Petitioner(s) knowledge and belief, title is in Petitioner(s) as above stated.

If this Terminal Disclaimer is signed by the attorney or agent of record, compliance with §3.73(b) is not required. See 1158 OG 164 (January 4, 1994).

2. The term "Prior Patent" means U.S. Patent No. 6,638,739, USP 6,420,139, USP 5,723,283 or USP 5,728,385. The "full statutory term" of the Prior Patent is, unless otherwise required by law, the initially granted term plus any extensions granted (including extensions granted after the execution of this Terminal Disclaimer or the issuance of the instant patent) and its expiration date is the last day of said full statutory term. The expiration date of the "full statutory term" of the Prior Patent shall not be affected by any premature termination of the

Prior Patent (other than as a result of a presently effective terminal disclaimer), including but not limited to lapse of the Prior Patent for failure to pay a maintenance fee, a holding that the Prior Patent is invalid or unenforceable, statutory disclaimer of the Prior Patent, a later terminal disclaimer of the Prior Patent, or cancellation of the claims of the Prior Patent by a re-examination certificate or a reissue patent, unless otherwise required by law.

3. The documents evidencing the ownership and chain of title with respect to the Prior Patent have been reviewed and to the best of Petitioner's knowledge, Petitioner owns an interest in the Prior Patent which is identical to said Petitioner's interest in the instant patent or application.

The ownership of the Prior Patent USP 6,638,739 is evidenced by an assignment from John Barthelow Classen to Classen Immunotherapies, Inc. recorded in the USPTO on February 11, 2003, at reel 013773, frame 0236.

The ownership of the other Prior Patents is evidenced by the assignment records of the USPTO.

4. Petitioner hereby disclaims, except as provided herein, the terminal part of the statutory term of the instant patent, or of any patent granted on the instant application, which would extend beyond the expiration date of the full statutory term of the aforementioned Prior Patent, as presently shortened by any terminal disclaimer applicable to said Prior Patent. This terminal disclaimer is being made without waiver of Petitioner's right to seek an extension of the patent term of the instant patent or patent granted on the instant application in accordance with law, including but not limited to the right to an extension under 35 USC §156. See 37 CFR §1.775(a).

5. Petitioner hereby agrees, except as provided herein, that the instant patent, or any patent granted on the instant application, shall be enforceable only for and during such period that it and the Prior Patent are commonly owned. This agreement runs with the instant patent, or any patent granted on the

instant application, and is binding upon the grantee, its successors, or assigns.

6. It is the intent of Petitioner that the scope of the terminal disclaimer of section 4 and the non-alienation agreement of section 5 be the minimum required by law, and such sections are to be construed to effectuate said intent.

7. No admission is made that any claims of the instant application or patent are obvious over the Prior Patent.

The signer is:

[ ] The owner of the patent or application.

[ ] An officer of the Assignee-Petitioner, empowered to execute this Terminal Disclaimer on its behalf.

[XX] The attorney or agent of record.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Date

4/7/04

By: \_\_\_\_\_  
Signed

Iver P. Cooper  
Typed

Attorney of Record  
Title

For: Classen Immunotherapies, Inc.  
Petitioner

In re USSN 09/660,584

Credit Card Payment Form, PTO-2038, authorizing the Terminal Disclaimer Fee of \$55.00 is attached. Please charge any deficiency or credit any overpayment to Deposit Account 02-4035.

Respectfully submitted,

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